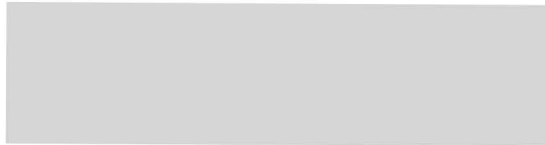




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE #: [REDACTED]

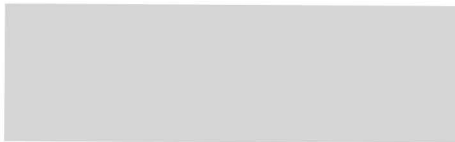
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a heavy duty truck manufacturer. On July 31, 2014 it filed a Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as a “configuration engineer – document specialist” and requesting that he be classified as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on December 9, 2013, and certified by the DOL (labor certification) on June 3, 2014. Part H of the labor certification sets forth the following minimum requirements for the job offered:

- | | | |
|-------|---|---|
| 4. | Education: Minimum level required: | Master’s degree |
| 4-B. | Major field of study: | Mechanical Engineering |
| 5. | Is training required? | No |
| 6. | Is experience in the job offered required? | Yes – 36 months |
| 7. | Is an alternate field of study acceptable | Yes |
| 7-A. | What field of study? | Industrial Engineering |
| 8. | Is an alternate combination of education and experience acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | Yes |
| 10-B. | What job title? | Automotive Engineering
Documentation |
| 14. | Specific skills or other requirements | |

Experience must include leading and validation of global engineering documentation projects. Knowledge of business processes of heavy truck manufacturing and process system interface.

As evidence of the beneficiary’s educational credentials the petitioner submitted the following documentation with the Form I-140 and in response to a Request for Evidence (RFE) issued by the Director on December 1, 2014:

- A “*Swiadcetwo Dojrzalosci Technikum Zawodowego*” – translated by the petitioner as “Vocational Technical High School Graduation Diploma” – from the [REDACTED] Automobile Technical High School in [REDACTED] Poland. The diploma was awarded on May 30, 1986, upon the beneficiary’s completion of a five-year course of study which followed eight years of elementary school.
- A “*Dyplom tytul magistra inzyniera*” – translated by the petitioner as “Diploma, Master’s Degree in Engineering” – from [REDACTED] Polytechnic in [REDACTED] Poland. The diploma was awarded on July 11, 1996, following the beneficiary’s completion of a five-year program for “Master’s Degree in Mechanical Engineering.”

As evidence of the beneficiary’s qualifying experience the petitioner submitted letters from two previous employers who stated that the beneficiary was employed by [REDACTED] in [REDACTED], Poland, in a succession of three different engineering jobs from November 1997 until March 2008, and by [REDACTED] in [REDACTED] North Carolina, as a documentation engineer from April 1, 2008 through September 30, 2010.

On April 21, 2015, the Director denied the petition on the ground that the evidence of record did not establish that the beneficiary has a U.S. master’s degree or a foreign equivalent degree. In particular, the Director determined that the beneficiary’s “*Dyplom tytul magistra inzyniera*” from [REDACTED] Polytechnic is equivalent to a U.S. bachelor’s degree in mechanical engineering. The Director cited information in the Electronic Database for Global Education (EDGE), a resource created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), as a basis for its equivalency finding. The Director also discussed two evaluations of the beneficiary’s education submitted by the petitioner – authored by [REDACTED] of The [REDACTED] Corporation ([REDACTED] evaluation) and [REDACTED] of [REDACTED] College ([REDACTED] evaluation). The Director found their conclusions that the beneficiary’s educational credential from [REDACTED] Polytechnic was equivalent to a U.S. master’s degree in mechanical engineering unpersuasive, citing *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988) (U.S. Citizenship and Immigration Services [USCIS] is not required to accept advisory opinions on the U.S. equivalency of foreign education if they are not in accord with other credible information).

The petitioner filed a timely appeal, which was supplemented by a brief from counsel. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

As indicated above, the ETA Form 9089 in this case is certified by the DOL. The DOL’s role is limited to determining whether (1) there are sufficient workers who are able, willing, qualified and available, and (2) whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. See section 212(a)(5)(A)(i) of the Act; 20 C.F.R.

§ 656.1(a). It is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine whether the offered position and the beneficiary are eligible for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The terms “advanced degree” and “profession” are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. [The occupations listed in section 101(a)(32) of the Act are “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”]

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, a petition for an advanced degree professional must establish that the beneficiary is a

member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Furthermore, an “advanced degree” is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty. The beneficiary must also meet the terms of the labor certification.

In his denial decision of April 21, 2015, the Director considered all of the educational evaluations and other submitted evidence and also utilized AACRAO’s database, EDGE, as a resource for determining the U.S. equivalency of the beneficiary’s foreign education. According to its website, www.aacrao.org, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions in over 40 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” *Id.* EDGE, as stated on its registration page, is “a web-based resource for the evaluation of foreign educational credentials” that is continually updated and revised by staff and members of AACRAO. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.¹

With regard to the beneficiary’s Polish credentials, EDGE indicates that a “*Swiadectwo dojrzalosci technikum*” (translated by EDGE as “Maturity Certificate of the Technical Secondary School”) is awarded after a student completes four to five years of technical secondary school, and is comparable to completing senior high school in the United States. That is the type of credential the beneficiary received in 1986 from the Automobile Technical High School in [REDACTED]. The beneficiary’s graduation diploma describes the school’s academic program as “a 5-year course of study on the basis of 8-year elementary school.” As for the beneficiary’s subsequent “*Dyplom tytul magistra inzyniera*” (translated by EDGE as “Title of Master Engineer”) from [REDACTED] Polytechnic,

¹ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that U.S. Citizenship and Immigration Services (USCIS) had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

EDGE indicates that this degree represents four to five years of full-time post-secondary study, and is comparable to a bachelor's degree in the United States.²

On appeal the petitioner contests this credential assessment by EDGE, and refers to its previously submitted evaluations from [REDACTED] and [REDACTED] to reiterate its claim that the beneficiary's education, culminating in his diploma from [REDACTED] Polytechnic, is equivalent to a master's degree in mechanical engineering from a U.S. university.

Both [REDACTED] and [REDACTED] describe the beneficiary's five-year program at the Automobile Technical High School in [REDACTED] as including one year of university-level studies, so that he entered [REDACTED] Polytechnic with a year of baccalaureate level education behind him. We do not agree with this assessment. The Automobile Technical High School in [REDACTED] is a vocational school. Its curriculum focuses heavily on automobile technology and mechanics, and related courses. While the beneficiary's curriculum did include a variety of courses in other subject areas including foreign language, history, social studies, economic geography, mathematics, physics, and chemistry, the record does not show that these courses were above and beyond those offered in a traditional high school. According to [REDACTED] the university-level courses taken by the beneficiary at the Automobile Technical High School included machine technology, technical thermodynamics, combustion engines, transportation enterprise economics, and "related" subjects. [REDACTED] has offered no evidence, however, that the scope and contents of these courses were at the university level, or that the beneficiary was granted advanced standing or transfer credits at the university level based on these courses. Rather, the courses cited by [REDACTED] seem central to a vocational school focusing on automobile technology. Based on the evidence of record, therefore, we conclude that the beneficiary's "Vocational Technical High School Graduation Diploma" from the Automobile Technical High School in [REDACTED] is equivalent to a diploma from a high school, or vocational high school, in the United States without any university level course content.

Accordingly, we do not agree with the claims of [REDACTED] and [REDACTED] that the beneficiary entered the five-year degree program in mechanical engineering at [REDACTED] Polytechnic with the equivalent of a year's worth of baccalaureate level credit at a U.S. college or university. Even if we assume, *arguendo*, that the beneficiary was granted credit for one year of university-level studies, it would not change the substance, or final academic value, of the beneficiary's "*Dyplom tytuł magistra inżyniera*." Nevertheless, [REDACTED] maintains that the five-year degree program completed by the beneficiary at [REDACTED] Polytechnic is similar in length and substance to other five-year engineering programs in Europe that EDGE rates as equivalent to master's degrees in the United States, as well as to five-year integrated bachelor's/master's degree programs in engineering at selected U.S. universities. In our view, however, the [REDACTED] evaluation does not adequately account for differences in the educational systems of the other European countries, or the fact that few five-year integrated

² The entrance requirement for this program, according to EDGE, is a "*Swiadectwo dojrzalosci lyceum ogolnoksztalcacego*" (translated by EDGE as "Maturity Certificate of the General Lyceum") which is awarded after a student completes three years of secondary school and (like the beneficiary's technical school certificate) is comparable to the completion of senior high school in the United States.

degree programs in engineering existed in the United States during the first half of the 1990s, when the beneficiary was studying at [REDACTED] Polytechnic, thus making a valid comparison of that school's program with U.S. programs difficult. USCIS may, in its discretion, use statements submitted as expert testimony as advisory opinions. When such opinions are not in accord with other information or are in any way questionable, however, USCIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony). The "*Dyplom Tytul Magistra Inzyniera*" earned by the beneficiary at a Polish polytechnic institute in 1996 was in a program that comprised five years of post-secondary study. After considering all the evidence of record, we find that the degree was most comparable to a U.S. bachelor's degree in mechanical engineering.

For all of the reasons discussed above, we conclude that the petitioner has not established that the beneficiary's "*Dyplom Tytul Magistra Inzyniera*" is equivalent to a U.S. master's degree.

Thus, the petitioner has not established the beneficiary's eligibility for classification as an advanced degree professional under section 203(b)(2) of the Act based on his "*Dyplom Tytul Magistra Inzyniera*" from [REDACTED] Polytechnic in Poland. Accordingly, the petition cannot be approved.

Qualifications for the Job Offered

To be eligible for approval under the immigrant visa petition, the beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).³ In this case, the priority date is December 9, 2013. The petition cannot be approved unless the beneficiary qualifies for the proffered position under the terms of the labor certification.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [immigrant visa category] status. That determination appears to be delegated to the INS⁴ under

³ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad.

⁴ The INS (Immigration and Naturalization Service) was succeeded by USCIS when the Homeland Security Act of 2002 took effect on March 1, 2003.

section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found in Part H of the ETA Form 9089. This part of the application describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education, training, and experience required for the proffered position in this case, the ETA Form 9089 states the following:

- The minimum educational requirement is a master's degree in mechanical engineering or industrial engineering, or a "foreign educational equivalent" (Part H, lines 4, 4-B, 7, 7-A, and 9).

- There is no minimum training requirement (Part H, line 5).
- The minimum experience requirement is 36 months (three years) in the job offered or in the job of automotive engineering documentation (Part H, lines 6, 10, and 10-B). The experience must include leading and validation of global engineering documentation project, and knowledge of business processes of heavy truck manufacturing and process system interface (Part H, box 14).
- No alternate combination of education and experience is acceptable (Part H, line 8).

The terms of the labor certification are clear. The employer specified that a master's degree or a foreign equivalent in mechanical or industrial engineering is required for the proffered position. The beneficiary's highest educational credential is a "*Dyplom Tytuł Magistra Inżyniera*" from a Polish polytechnical institute awarded after five years of post-secondary study that followed graduation from a vocational high school specializing in automobile technology and mechanics. As previously discussed in this decision, we have concluded that the "*Dyplom Tytuł Magistra Inżyniera*" is not equivalent to a U.S. master's degree in engineering. Since the beneficiary does not have a "foreign educational equivalent" to a U.S. master's degree, he does not qualify for the proffered position of "configuration engineer – document specialist" under the terms of the labor certification. For this reason as well, the petition cannot be approved.

Conclusion

The beneficiary does not qualify for the proffered position under the terms of the labor certification, which requires a U.S. master's degree in mechanical or industrial engineering, or a foreign equivalent degree, and does not allow for an alternate combination of a U.S. baccalaureate or foreign equivalent degree and five years of progressive experience in the specialty. In addition, the beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act because he does not meet the requirements of the labor certification.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. See section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The appeal is dismissed.